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IN THE CIRCUIT COURT OF THE  
EIGHTEENTH JUDICIAL CIRCUIT  
IN AND FOR BREVARD COUNTY,  
FLORIDA

CASE NO. 2012-CF-35337-A

STATE OF FLORIDA,

Plaintiff,

vs.

BRANDON LEE BRADLEY,

Defendant.

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**OBJECTIONS TO STANDARD PENALTY PHASE  
JURY INSTRUCTIONS**

The Defendant, BRANDON LEE BRADLEY, pursuant to Fla.R.Crim.P. 3.390(d), and §§ 924.051(1)(b) & 924.051(3), Fla. Stat., objects to Florida’s Standard Penalty Phase Jury Instructions. All arguments previously made in this case concerning the constitutionality of the death penalty under Florida’s statutory scheme are hereby adopted and renewed. Imposition of capital punishment violates “the evolving standards of decency that mark the progress of a maturing society,” Trop v. Dulles, 356 U.S. 86, 100-101 (1958) (plurality opinion) and is thus unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution. See Roper v. Simmons, 543 U.S. 551 (2005).

Florida’s standard jury instructions are so replete with error that instructions correcting all of the errors cannot realistically be proposed and doing so in many instances asks this Court to violate the separation of powers provision of article II, section 3 of the Florida Constitution. The rules of statutory construction permit judicial interpretation of an ambiguous statute, but when the statute is not ambiguous, the court cannot rewrite plain statutory language to avoid

declaring the statute unconstitutional. See HUD v. Rucker, 535 U.S. 125, 134 (2002) (The doctrine of constitutional avoidance “has no application in the absence of statutory ambiguity.”). The Defendant asserts his right to Due Process and separation of powers under the Constitution of Florida, and submits that the separation of powers requirement contained in the Constitution of the State of Florida precludes the correction by this Court of substantive errors contained in Florida’s death penalty statute. A violation of the State Constitution over timely and express objection also violates the right to Due Process under the Fourteenth Amendment to the United States Constitution. (“[N]or shall any State deprive any person of life, liberty, or property, without due process of law[.]” Amendment XIV, §1, United States Constitution).

Further, the role of the jury in Florida to make a sentencing recommendation concerning imposition of capital punishment without a unanimous finding of the existence of “sufficient aggravating circumstances” overall and/or the independent statutory criteria of each statutory aggravating circumstance upon which imposition of capital punishment is based neither comports with nor satisfies fundamental requirements under the Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and article I, sections 2, 9, 16, 17 and 22 of the Florida Constitution. The procedure that may be used by this Court is constrained by the Supreme Court of Florida. State v. Steele, 921 So.2d 538 (Fla. 2006) (a trial court departs from the essential requirements of law by using a penalty phase special verdict form that details the jurors’ determination concerning aggravating factors found by the jury).

Under the procedure created by Section 921.141, Florida Statute, a death recommendation by the jury is necessarily based on factual elements relating to factors set forth in Section 921.141(5), Fla. Stat., that are *not* properly alleged/noticed in the Indictment as elements of the statutory definition of capital murder. See State v. Hootman, 705 So.2d 1357,

1360 (Fla. 1998) (“The aggravating circumstances . . . actually define those crimes . . . to which the death penalty is applicable.”) (quoting State v. Dixon, 283 So.2d 1, 9 (Fla. 1973)). Those statutory criteria are *not* unanimously found to exist beyond a reasonable doubt by the jury, either when the defendant is convicted of first-degree murder as defined by Section 782.04, Florida Statute, or when the jury issues its recommendation under Section 921.141(2), Florida Statute. The Florida sentencing procedure violates the Sixth and Fourteenth Amendments to the United States Constitution under the holdings and analyses of the United States Supreme Court in Shepard v. United States, 544 U.S. 13 (2005); United States v. Booker, 543 U.S. 220 (2005), Ring v. Arizona, 536 U.S. 584 (2002), Apprendi v. New Jersey, 530 U.S. 466 (2001), and Jones v. United States, 526 U.S. 227 (1999) and Mullaney v. Wilbur, 421 U.S. 684 (1975); and, State v. Overfelt, 457 So.2d 1385 (Fla. 1984). But see, Winkles v. State, 894 So.2d 842 (Fla. 2005); Bottoson v. Moore, 833 So.2d 693, 732-733 (Fla. 2002). Florida’s capital sentencing procedure violates Due Process (notice and the unanimous jury determination of the statutory factual criteria upon which punishment is based, proved beyond a reasonable doubt) under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and article I, sections 2, 9, 16, 17 and 22 of the Florida Constitution.

These objections and the objections set forth in the accompanying endnotes are expressly made to preserve constitutional error for appellate review. The objections pertain to the specific arguments previously presented to this Court in the form of motions to declare Florida’s death penalty unconstitutional and objections to the death qualification of jurors where Florida’s death penalty statutes and procedures are unconstitutional. These objections are intended to “place[] the trial judge on notice that error may have been committed, and provide[] him an opportunity to correct it at an early stage of the proceedings.” Castor v. State, 365 So.2d 701, 703 (Fla.

1978). See Harrell v. State, 894 So.2d 935 (Fla. 2005). It is well-established that defendants in Florida are fundamentally entitled to have jurors correctly, fairly and fully instructed on the law governing capital punishment, where a timely and specific objection is made:

There is no question that the standard HAC jury instructions in effect at the time of Arbelaez's trial were unconstitutionally vague under the holding of *Espinosa v. Florida*, 505 U.S. 1079, 112 S.Ct. 2926, 120 L.Ed.2d 854 (1992), and the standard CCP instructions were unconstitutionally vague under the holding of *Jackson v. State*, 648 So.2d 85 (Fla. 1994). Both *Espinosa* and *Jackson*, however, were decided after the trial in Arbelaez's case. Arbelaez did not object to the content of the HAC or CCP instructions at trial. *Arbelaez*, 775 So.2d at 919 n.8. For this reason alone, the vagueness of those instructions could not have been raised by Arbelaez's counsel on appeal. This Court has repeatedly held that "[t]he contemporaneous objection rule applies to *Espinosa* error, i.e., a specific objection on the form of the instruction must be made to the trial court to preserve the issue for appeal." *Hodges v. State*, 619 So.2d 272, 273 (Fla.), cert. denied, 510 U.S. 996, 114 S.Ct. 560, 126 L.Ed.2d 460 (1993); see also *Nelson v. State*, 850 So.2d 514, 525 (Fla.), cert. denied, 540 U.S. 1091, 1124 S.Ct. 961, 157 L.Ed.2d 797 (2003); *Melendez v. State*, 612 So.2d 1366 (Fla. 1992). Similarly, we have required a contemporaneous objection in order to preserve a challenge to vague CCP instructions. See, e.g., *Jackson*, 648 So.2d at 90. ("Claims that the instruction on the [CCP] aggravator is unconstitutionally vague are procedurally barred unless a specific objection is made at trial and pursued on appeal.") (citing *James v. State*, 615 So.2d 668, 669 & n.3 (Fla. 1993)). Because Arbelaez's *Espinosa* and *Jackson* claims would have been procedurally barred, his appellate counsel was not ineffective in failing to raise them on appeal.

Arbelaez v. State, 898 So.2d 25, 46 (Fla. 2005) (Emphasis added). It is the obligation of the Court to fully, fairly and accurately instruct on the law.

Accordingly, objections to Florida's standard penalty phase jury instructions and, when possible, proposed instructions are set forth in the accompanying endnotes and the memorandum of law that follow. Proposed instructions are "highlighted" for the convenience of this Court. The errors<sup>1</sup> contained in the standard jury instructions, as previously stated and as hereafter noted,

singularly and when combined deny the basic rights to a jury trial, Due Process, a fair judicial proceeding and a reliable result. The faulty instructions and procedures result in arbitrary, capricious and unreliable imposition of the death penalty in violation of article I, sections 2, 9, 15(a), 16, 17 and 22 of the Florida Constitution, article II, section 3 of the Florida Constitution, and the Fifth, Sixth, Eighth, and Fourteenth Amendments to the United States Constitution.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-service to the Office of the State Attorney, Brevard County, Florida, this 8<sup>th</sup> day of November, 2013.



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